

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
April 16, 2009 Session

**STANLEY WALLACE v. KROGER LIMITED PARTNERSHIP I**

**Appeal from the Circuit Court for Blount County  
No. L-16123    W. Dale Young, Judge**

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**No. E2008-01973-COA-R3-CV - FILED APRIL 23, 2009**

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This is a personal injury lawsuit filed by Stanley Wallace (“Plaintiff”) against Kroger Limited Partnership I (“Kroger”). Plaintiff, proceeding pro se, claims that he was injured when he slipped and fell at a Kroger store in Blount County on March 10, 2007. Plaintiff’s complaint was filed on March 11, 2008. The Trial Court dismissed the complaint after finding that it was filed outside the applicable statute of limitations. Plaintiff appeals, and we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the  
Circuit Court Affirmed; Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., and JOHN W. McCLARTY, JJ., joined.

Stanley Wallace, pro se Appellant.

Charles F. Sterchi, III, Knoxville, Tennessee, for the Appellee, Kroger Limited Partnership I.

**MEMORANDUM OPINION<sup>1</sup>**

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<sup>1</sup> Rule 10 of the Rules of the Court of Appeals provides: “This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a  
(continued...) ”

## Facts

The record in this case begins with Plaintiff's Affidavit of Indigency filed on March 10, 2008, followed by a complaint filed on March 11, 2008. Plaintiff is proceeding pro se and filed this lawsuit after he allegedly was injured following a slip and fall at a Kroger's grocery store. The complaint states "this cause came above on March 10 07 slip and fall at Kroger."

Kroger filed a motion to dismiss because "the plaintiff's Complaint was filed on March 11, 2008, one day after the statute of limitations for injuries to the person ran. T.C.A. § 28-3-104(a)(1) (2000)."

Following a hearing on the motion to dismiss, the Trial Court entered an order dismissing this case after finding that the statute of limitations had expired before the complaint was filed.

Plaintiff appeals. In his brief, Plaintiff does not claim that the statute of limitations had not expired when the complaint was filed on March 11, 2008. The primary gist of his one-page brief is that Kroger should be held liable for the injuries he received when he slipped and fell at the store.

## Discussion

"Whether a claim is barred by an applicable statute of limitations is a question of law." *Brown v. Erachem Comilog, Inc.*, 231 S.W.3d 918, 921 (Tenn. 2007). With respect to legal issues, our review is conducted "under a pure *de novo* standard of review, according no deference to the conclusions of law made by the lower courts." *Southern Constructors, Inc. v. Loudon County Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

Tenn. Code Ann. § 28-3-104 (2000) provides a one-year statute of limitation for causes of actions based on personal injury. Specifically, the statute provides:

(a) The following actions shall be commenced within one (1) year after the cause of action accrued:

(1) Actions for . . . injuries to the person . . . .

The undisputed facts show that Plaintiff's cause of action accrued on the day of injury, i.e., March 10, 2007. Plaintiff did not file his lawsuit until Tuesday, March 11, 2008. This was one day after the expiration of the statute of limitations.

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<sup>1</sup>(...continued)

formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated 'MEMORANDUM OPINION,' shall not be published, and shall not be cited or relied on for any reason in any unrelated case."

Plaintiff claims in his brief<sup>2</sup> that he went to the courthouse on March 10, 2008, with a complaint to be filed. He claims that he was to fill out an affidavit of indigency, that he did so, and that the affidavit was filed on March 10. Plaintiff further alleges that the complaint was stamped “filed” on March 10, 2008, but was returned to him so that he could correct several errors. Plaintiff then claims that he corrected these problems and returned the next day, March 11, and the complaint was filed at that time. Plaintiff at oral argument stated that, for some unknown reason, he cannot locate the copy of the complaint that allegedly was stamped “filed” on March 10, 2008.

Rule 3 of the Tennessee Rules of Civil Procedure provides that “[a]ll civil actions are commenced with the filing of a complaint with the clerk of the court. An action is commenced within the meaning of any statute of limitations upon such filing of a complaint . . . .” Based on the plain language of Rule 3, the filing of an Affidavit of Indigency does not operate to commence the filing of an action. Based upon the record before us, the complaint was filed on March 11, 2008, one day after the statute of limitations had expired, and the Trial Court correctly dismissed this lawsuit.<sup>3</sup>

### **Conclusion**

The judgment of the Trial Court is affirmed and this cause is remanded to the Circuit Court of Blount County solely for the collection of costs below. Costs on appeal are taxed to the Appellant, Stanley Wallace, and his surety, if any.

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D. MICHAEL SWINEY, JUDGE

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<sup>2</sup> There is nothing in the record to support these allegations.

<sup>3</sup> While this appeal was pending, Plaintiff filed a motion to supplement the record. Plaintiff sought to supplement the record with medical records documenting his claimed injury. Because these medical records do not impact on the statute of limitations issue, we deny the motion.